

1 The Honorable Richard A. Jones
2
3
4
5
6
7

8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 BOMBARDIER, INC.,) NO. 2:18-cv-1543-RAJ
12 Plaintiff,)
13 v.) AEROTEC DEFENDANTS'
14 MITSUBISHI AIRCRAFT CORPORATION,) MOTION TO DISMISS
15 MITSUBISHI AIRCRAFT CORPORATION)
16 AMERICA, INC.; AEROSPACE TESTING) Note on Motion Calendar:
17 ENGINEERING & CERTIFICATION, INC.;) Friday, January 11, 2019
18 MICHEL KORWIN-SZYMANOWSKI;)
19 LAURUS BASSON; MARC-ANTOINE) ORAL ARGUMENT REQUESTED
20 DELARCHE; CINDY DORNÉVAL; KEITH)
21 AYRE; and JOHN AND/OR JANE DOES 1-88,)
22 Defendants.)
23)
24)
25)
26)
27)

1

2 **TABLE OF CONTENTS**

3

I.	FACTUAL ALLEGATIONS	1
A.	Background.....	1
B.	Laurus Basson.....	3
C.	Marc-Antoine Delarche.....	3
D.	Cindy Dornéval.....	3
E.	Keith Ayre.....	4
F.	Michel Korwin-Szymanowski.....	4
G.	AeroTEC.....	4
H.	Unwarranted Factual Inferences.....	5
II.	AUTHORITY AND ARGUMENT	5
A.	Breach of Contract Claims (Against Basson and Dornéval).	6
1.	Plaintiff Fails to Allege the Requisite Elements of a Valid Contract.	6
2.	Plaintiff Fails to Plausibly Allege Any Breach of the Code of Ethics.....	8
B.	Tortious Interference Claims (Against AeroTEC or Korwin-Szymanowski).	8
1.	Plaintiff Has Failed to Allege a Valid Contractual Relationship or Business Expectancy.....	9
2.	Plaintiff Has Failed to Plausibly Allege Interference for Any “Improper Purpose” or by “Improper Means.”	11
C.	The Breach of Contract Claims and Tortious Interference Claims Also Fail Because They are Preempted by WUTSA.....	12
D.	Trade Secret Misappropriation Claims Under the DTSA and WUTSA Fail.....	13
1.	Basson and Dornéval Never Improperly Acquired the Documents.....	15
2.	The DTSA Claim Against Basson Fails Because the DTSA is not Retroactive	16
3.	There is No Plausible Factual Basis for the Claim That Basson and Dornéval Used or Disclosed Trade Secrets.	16
4.	There is no Plausible Factual Basis for the Claim That AeroTEC and Korwin-Szymanowski Misappropriated Trade Secrets.	16
5.	Knowledge of Misappropriation may not be Imputed to AeroTEC or Korwin-Szymanowski.	17
6.	There are no Facts Alleged Sufficient to Plausibly Demonstrate Misappropriation by AeroTEC or Korwin-Szymanowski.....	18
III.	CONCLUSION	19

TABLE OF AUTHORITIES

Cases

3	<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009)	5, 6
4	<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007)	5, 6, 11, 16, 18
5	<i>Butcher v. Mortg. Elec. Registration Sys., Inc.</i> , No. 3:11-cv-00886, 2012 U.S. Dist. LEXIS 124162 (D. Nev. Aug. 31, 2012)	7
6	<i>Carr v. AutoNation Inc.</i> , No. 2:17-cv-01539, 2018 U.S. Dist. LEXIS 1869 (E.D. Cal. Jan. 4, 2018)	17
7	<i>Droeger v. Welsh Sporting Goods Corp.</i> , 541 F.2d 790 (9th Cir. 1976)	17
8	<i>Evergreen Moneysource Mrtg. Co. v. Shannon</i> , 167 Wn. App. 242, 274 P.3d 375 (2012)	10
9	<i>Experience Hendrix, L.L.C. v. HendrixLicensing.com, LTD</i> , 766 F. Supp. 2d 1122 (W.D. Wash. 2011)	12
10	<i>Ford v. Trendwest Resorts, Inc.</i> , 146 Wn.2d 146, 43 P.3d 1223 (2002)	10
11	<i>Gamble v. Pac. Nw. Reg'l Council of Carpenters</i> , No. C14-455 RSM, 2015 U.S. Dist. LEXIS 69293 (W.D. Wash. May 28, 2015)	10
12	<i>Inteum Co., LLC v. Nat'l Univ. of Singapore</i> , No. C17-1252-JCC, 2018 U.S. Dist. LEXIS 85713 (W.D. Wash. May 22, 2018)	13, 18
13	<i>Joshua David Mellberg LLC v. Will</i> , 96 F. Supp. 3d 953 (D. Ariz. 2015)	17
14	<i>JustMed Inc. v. Byce</i> , 600 F.3d 1118 (9th Cir. 2010)	15
15	<i>Labor Ready, Inc. v. Williams Staffing, LLC</i> , 149 F. Supp. 2d 398 (N.D. Ill. 2001)	13
16	<i>Labriola v. Pollard Grp., Inc.</i> , 152 Wn.2d 828, 100 P.3d 791 (2004)	7
17	<i>Lehrer v. State Dept. of Social and Health Servs.</i> , 101 Wn. App. 509, 5 P.3d 722 (2000)	6
18	<i>Leingang v. Pierce Cty. Med. Bureau</i> , 131 Wn.2d 133, 930 P.2d 288 (1997)	9, 12
19	<i>Life Designs Ranch, Inc. v. Sommer</i> , 191 Wn. App. 320, 364 P.3d 129 (2015)	12
20	<i>Linens of Eur., Inc. v. Best Mfg., Inc.</i> , No. 03 Civ. 9612 (GEL), 2004 U.S. Dist. LEXIS 18575 (S.D.N.Y. Sept. 16, 2004)	11
21	<i>Manufactured Home Cmtys., Inc. v. City of San Jose</i> , 420 F.3d 1022 (9th Cir. 2005)	5
22	<i>Mattel, Inc. v. MGM Entm't, Inc.</i> , 782 F. Supp. 2d 911 (C.D. Cal. 2010)	7
23	<i>Mills v. Bank of Am., N.A.</i> , No. 3:14-cv-05238-RBL, 2014 U.S. Dist. LEXIS 117563 (W.D. Wash. Aug. 22, 2014)	7
24	<i>Moore v. Commercial Aircraft Interiors, LLC</i> , 168 Wn. App. 502, 278 P.3d 197 (2012)	12
25	<i>Nat'l City Bank, N.A. v. Prime Lending, Inc.</i> , No. CV-10-034-EFS, 2010 U.S. Dist. LEXIS 85888 (E.D. Wash. July 19, 2010)	10
26	<i>Pleas v. Seattle</i> , 112 Wn.2d 794, 774 P.2d 1158 (1989)	12
27	<i>Racetech, LLC v. Ky. Downs, LLC</i> , 169 F. Supp. 3d 709 (W.D. Ky. 2016)	11
	<i>Robertson v. Dean Witter Reynolds, Inc.</i> , 749 F.2d 530 (9th Cir. 1984)	6
	<i>T Mobile USA, Inc. v. Huawei Device USA, Inc.</i> , 115 F. Supp. 3d 1184 (W.D. Wash. 2015)	9, 13

1	<i>Thola v. Henschell</i> , 140 Wn. App. 70 164 P.3d 524 (2007).....	13
2	<i>Thompson v. St. Regis Paper Co.</i> , 102 Wn.2d 219, 685 P.2d 1081.....	7, 10
3	<i>Ultimate Timing, L.L.C. v. Simms</i> , 715 F. Supp. 2d 1195 (W.D. Wash. 2010).....	13
4	<i>Ultimate Timing, L.L.C. v. Simms</i> , No. C08-1632-MJP, 2010 U.S. Dist. LEXIS 64957 (W.D. Wash. June 29, 2010).....	13
5	<i>Usher v. City of Los Angeles</i> , 828 F.2d 556 (9th Cir. 1987).....	6
6	<i>Wilco AG v. Packaging Techs. & Inspection LLC</i> , 615 F. Supp. 2d 320 (D. Del. 2009).....	11
7	Statutes	
8	18 U.S.C. § 1839(5)	14
9	18 U.S.C. § 1839(5)(A).....	14
10	18 U.S.C. § 1839(5)(A),(B)	17
11	18 U.S.C. § 1839(5)(B).....	15
12	18 U.S.C. § 1839(6)	14
13	Defend Trade Secrets Act (“DTSA”) (18 U.S.C. § 1836 <i>et seq.</i>).....	13
14	Defend Trade Secrets Act of 2016, Pub. L. No. 114-153, § 2(e)	16
15	RCW 19.108.010(1).....	14
16	RCW 19.108.010(2).....	14
17	RCW 19.108.010(2)(a)	14
18	RCW 19.108.010(2)(a),(b).....	17
19	RCW 19.108.010(2)(b)(i)-(ii)	15
20	RCW 19.108.900(1)-(2).....	12
21	RCW Chapter 19.108.....	12
22	Rules	
23	Fed. R. Civ. P. 12(b)(6).....	1, 13
24		
25		
26		
27		

1 Defendants Aerospace Testing Engineering & Certification, Inc. (“AeroTEC”), Michel
 2 Korwin-Szymanowski, Laurus Basson and Cindy Dornéval (collectively, the “AeroTEC
 3 Defendants”) respectfully ask this Court for an order dismissing all claims asserted against them
 4 in Plaintiff Bombardier Inc.’s Verified Complaint for failure to state a claim under Fed. R. Civ. P.
 5 12(b)(6). Plaintiff’s claims all rest on the theory that it was improper and a breach of contract for
 6 its former employees to email documents to themselves at their personal email accounts, which
 7 fails as a matter of law. Aside from the alleged fact that such emails were sent, Plaintiff’s 91-page
 8 Complaint contains nothing but speculation, improbable inferences, and a formulaic recitation of
 9 the elements of their causes of action.

10 Plaintiff’s Complaint fails to state claims for breach of contract against Dornéval and
 11 Basson (Counts XII and XVII), because there are no allegations to show a valid contract supported
 12 by consideration, and in any event, Plaintiff’s employees were not prohibited from emailing
 13 documents to themselves under the Code of Ethics (upon which those claims are predicated) as a
 14 matter of law. Plaintiff’s claims against AeroTEC and Korwin-Szymanowski for tortious
 15 interference (Counts IX and XXI) fail to allege a valid contractual relationship of business
 16 expectancy, nor any facts to show that the recruitment of Plaintiff’s employees was done for any
 17 improper purpose. Finally, Plaintiff’s federal and state trade secret misappropriation claims against
 18 all four AeroTEC Defendants (Counts V, VI, X, XI, XVI, XVII, XIX and XX) rely purely on
 19 implausible inferences from speculation that any of the AeroTEC Defendants used or disclosed
 20 any trade secrets after the individual defendants left Bombardier’s employ. This Court should
 21 therefore dismiss all claims against the AeroTEC Defendants.

22 **I. FACTUAL ALLEGATIONS**

23 **A. Background.**

24 Plaintiff is a large company with over 69,000 employees, more than 29,000 of whom work
 25 in its aerospace division. Complaint ¶¶21-22. Plaintiff spent years and significant resources to
 26 obtain certification of its narrow-body airliners known as the CSeries. Complaint ¶¶23-26. For
 27 years, the regional jet market has been dominated by two main players: Bombardier and Brazilian-

1 based Embraer that have enjoyed a significant market share in the commercial regional jet industry.

2 *See* Dkt. 1-10 at 52; *id.* at 93; *id.* at 163.

3 Defendant Mitsubishi Aircraft Corporation (“MITAC”) has for years been developing the
 4 Mitsubishi Regional Jet (the “MRJ”), which threatens to compete with Plaintiff’s aircraft.
 5 Complaint ¶34-35. MITAC experienced a number of delays in its anticipated schedule to certify
 6 the MRJ. Complaint ¶¶ 36-40. In 2014, MITAC formed co-defendant Mitsubishi Aircraft
 7 Corporation America, Inc. (“MITAC-A”), and enlisted the assistance of AeroTEC, a local
 8 engineering company, to help with MITAC’s MRJ certification efforts. Complaint ¶41. AeroTEC
 9 hired Korwin-Szymanowski, Plaintiff’s former Director of the CSeries Flight Test teams, in 2015,
 10 and after announcing another certification schedule delay, began a “direct recruiting effort of
 11 Bombardier personnel” with experience in aircraft engineering, testing and certification.
 12 Complaint ¶¶48-49. AeroTEC and Korwin-Szymanowski organized “job fairs” near Plaintiff’s
 13 headquarters and flight test center, advertised job openings, and sent emails to industry contacts,
 14 including Bombardier personnel. Complaint ¶¶49-51.

15 Plaintiff then engaged in “significant steps short of litigation to stop” the defendants
 16 “targeted recruiting efforts[.]” Complaint ¶52. It sent cease and desist letters to Korwin-
 17 Szymanowski and AeroTEC, emphasizing its former employees ongoing obligation to maintain
 18 the confidentiality of Plaintiff’s proprietary information. Complaint ¶¶52-53. Plaintiff asked
 19 AeroTEC and all its former Bombardier employees to sign an “Agreement and
 20 Acknowledgement,” agreeing they would not directly or indirectly solicit or communicate with
 21 current or former Bombardier employees for a year. Complaint ¶53. Bombardier cited to its Code
 22 of Ethics as imposing an obligation on employees to maintain the confidentiality of confidential
 23 information even after leaving the employ of Bombardier. *Id.* Bombardier thereafter contacted
 24 MITAC and its affiliates complaining of their solicitation of employees, stating it had “reason to
 25 believe the employees recruited . . . will use the intellectual property owned by Bombardier to
 26 assist . . . in developing the MRJ aircraft which will compete against Bombardier aircraft.”
 27 Complaint ¶56.

KARR TUTTLE CAMPBELL
 701 Fifth Avenue, Suite 3300
 Seattle, Washington 98104
 Main: (206) 223 1313
 Fax: (206) 682 7100

1 Collectively, MITAC, MITAC-A and AeroTEC now employ “at least 92 former
 2 Bombardier personnel whose current job responsibilities relate directly to the development,
 3 certification, and/or commercialization of the MRJ.” Complaint ¶59.

4 **B. Laurus Basson.**

5 Defendant Laurus Basson is a mechanical systems engineer, who worked for Bombardier
 6 for over three years. Complaint ¶7. On March 4, 2016, his last day at Bombardier, Basson allegedly
 7 sent an email to his personal email account with two PowerPoint slide decks relating to
 8 Bombardier’s Global 7000/8000 aircraft’s skew detection system. Complaint ¶60 and Exh. J. The
 9 two documents are filed under seal as Exhibits A and B to the Declaration of Daniel Burns, filed
 10 contemporaneously with the Complaint. Because he sent this email on his last day, Plaintiff alleges
 11 that “Basson on information and belief had every intention of using this information in his new
 12 role” for AeroTEC. Complaint ¶60.

13 **C. Marc-Antoine Delarche.**

14 Delarche worked for Bombardier for over ten years (Complaint ¶8) and emailed six
 15 documents to himself in the two weeks before his departure and after giving his notice of
 16 resignation to Bombardier. Complaint ¶¶8, 61. These documents are filed under seal as Exhibits C
 17 to H of the Burns Declaration. Because of the timing, plaintiff alleges that “Delarche on
 18 information and belief had every intention of using this information in his new role” for AeroTEC.
 19 Complaint ¶61.

20 **D. Cindy Dornéval.**

21 Defendant Dornéval worked at Bombardier for approximately ten years, most recently as
 22 an Aircraft Performance Engineer. Complaint ¶9. On November 18, 2016, Dornéval sent an email
 23 to her personal email account, attaching Production Flight Test Profiles. *See* Complaint ¶62 and
 24 Exh. O. These documents are filed under seal as Exhibits I & J to the Burns Declaration. Plaintiff
 25 alleges that Dornéval “knew or should have known she was violating Bombardier’s Code of Ethics
 26 when she emailed such highly sensitive information to her personal email account.” Complaint
 27 ¶62. Later, on February 10, 2017 (her last day at Bombardier), Dornéval attempted but failed to

1 send an email to herself with a zip file containing four other confidential documents. Complaint
 2 ¶63, Exh. Q. One of these documents is filed under seal contemporaneously with the Complaint
 3 as Exhibits A to the Declaration of David Tidd. Although the February 10 emails admittedly failed
 4 to go through, Plaintiff alleges that, “[u]pon information and belief, Defendant Dornéval
 5 absconded with this information in either hard copy form or through portable storage device means
 6 after realizing the file was too large to send by way of email.” Complaint ¶63. Again, because of
 7 the timing, Dornéval had “every intention of misusing the information in her new role” at
 8 AeroTEC. Complaint ¶63.

9 **E. Keith Ayre.**

10 Defendant Keith Ayre worked at Bombardier for over 32 years as an aerospace engineer.
 11 Complaint ¶10. He is accused of retaining “several” emails on August 24, 2016, before leaving for
 12 MITAC’s employ. Complaint ¶65-67. Ayre is not alleged to have ever worked at AeroTEC or with
 13 any of the AeroTEC Defendants.

14 **F. Michel Korwin-Szymanowski.**

15 Korwin-Szymanowski worked at Bombardier for approximately 15 years. Complaint ¶6.
 16 Unlike the other individual defendants, he is not accused of breaching the Code of Ethics or
 17 emailing or stealing any specific proprietary documents, but is alleged to have tortiously interfered
 18 with Plaintiff’s contractual relationships and/or business expectancies and to have misappropriated
 19 Bombardier trade secrets “by inducing or knowingly permitting Defendants Basson, Delarche, and
 20 Dornéval to misappropriate, divulge, and/or use the Bombardier trade secrets described above
 21 through his targeted recruitment efforts on behalf of AeroTEC[.]” Complaint ¶¶238, 247.

22 **G. AeroTEC.**

23 Like Korwin-Szymanowski, AeroTEC is not accused of breaching the Code of Ethics or
 24 emailing or stealing any specific proprietary documents, but is alleged to have tortiously interfered
 25 with Plaintiff’s contractual relationships and/or business expectancies and to have misappropriated
 26 Bombardier trade secrets “by inducing or knowingly permitting Defendants Basson, Delarche, and

1 Dornéval to misappropriate, divulge, and/or use the Bombardier trade secrets described above
 2 through his targeted recruitment efforts on behalf of AeroTEC[.]” Complaint ¶¶238, 247.

3 **H. Unwarranted Factual Inferences.**

4 Other than the allegations that its former employees sent documents to their own personal
 5 email accounts, the allegations in Plaintiff’s Complaint are based on speculation and unwarranted
 6 inferences. Nowhere does Plaintiff allege that Basson, Delarche, or Dornéval used the documents
 7 for anything specific to the MRJ, nor to whom any information contained therein may have been
 8 disclosed. Plaintiff does not allege that the documents contained any information relating to
 9 MITAC’s redesign of the MRJ’s avionics bay, which is the critical certification issue “identified
 10 only shortly after MITAC’s direct recruiting efforts of Bombardier personnel began paying off.”
 11 Complaint ¶48. A review of the documents themselves reveals nothing about any information
 12 relating to the avionics bay or any “revisions of certain systems and electrical configurations on
 13 the aircraft to meet the latest requirements for certification” as alleged in the Complaint at ¶47.

14 **II. AUTHORITY AND ARGUMENT**

15 To survive a motion to dismiss for failure to state a claim upon which relief can be granted,
 16 a complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that
 17 is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v.*
 18 *Twombly*, 550 U.S. 544, 570 (2007)). This requirement is met where the complaint “pleads factual
 19 content that allows the court to draw the reasonable inference that the defendant is liable for the
 20 misconduct alleged.” *Id.* The complaint must have “more than labels and conclusions, and a
 21 formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555.

22 The complaint must indicate more than mere speculation of a right to relief. *Twombly*, 550
 23 U.S. at 555. “Sufficient factual matter” necessary to avoid dismissal of a complaint does not
 24 include allegations that are conclusory or speculative or that require the Court to draw
 25 unreasonable or unwarranted factual inferences. *See Manufactured Home Cmtys., Inc. v. City of*
 26 *San Jose*, 420 F.3d 1022, 1035 (9th Cir. 2005). When a complaint fails to adequately state a claim,
 27 such deficiency should be “exposed at the point of minimum expenditure of time and money by

1 the parties and the court.” *Twombly*, 550 U.S. at 558. A complaint may be lacking for one of two
 2 reasons: (i) absence of a cognizable legal theory, or (ii) insufficient facts under a cognizable legal
 3 claim. *See Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984). In ruling
 4 on a motion to dismiss, the Court must assume the truth of the plaintiff's allegations and draw all
 5 reasonable inferences in the plaintiff's favor. *See Usher v. City of Los Angeles*, 828 F.2d 556, 561
 6 (9th Cir. 1987). The question for the Court is whether the facts in the complaint sufficiently state
 7 a “plausible” ground for relief. *Twombly*, 550 U.S. at 570.

8 “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more
 9 than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads “facts”
 10 that are ‘merely consistent with’ a defendant’s liability, it stops short of the line between possibility
 11 and plausibility of entitlement to relief. *Iqbal*, 556 U.S. (2009) at 678. Under this standard,
 12 allegations that “do nothing more than state a legal conclusion – even if that conclusion is cast in
 13 the form of a factual allegation” are insufficient. *Id.*

14 **A. Breach of Contract Claims (Against Basson and Dornéval).**

15 Plaintiff’s breach of contract claims against Basson and Dornéval are based on the
 16 allegation that they violated Plaintiff’s Code of Ethics when they emailed documents to
 17 themselves, and because they must have divulged the documents or information to others or used
 18 them for AeroTEC. But the Complaint fails to allege facts to show that the Code of Ethics was a
 19 valid and binding contract, and in any event, nothing in the Code of Ethics prohibits a Bombardier
 20 employee from emailing documents to their personal email accounts. The allegations of
 21 subsequent use or disclosure are insufficiently speculative to state a claim.

22 **1. Plaintiff Fails to Allege the Requisite Elements of a Valid Contract.**

23 To prevail on its breach of contract claim, Plaintiff must establish the existence of a valid
 24 contract imposing a duty, breach of that duty, and resulting damage. *E.g., Lehrer v. State Dept. of*
Social and Health Servs., 101 Wn. App. 509, 516, 5 P.3d 722 (2000). An employer’s code of
 25 ethics, code of conduct, or similar purported obligations are not binding unless separate
 26 consideration was given in exchange for the employee’s alleged promise. *See Mattel, Inc. v. MGM*
 27

1 *Entm't, Inc.*, 782 F. Supp. 2d 911, 992 (C.D. Cal. 2010); *accord Labriola v. Pollard Grp., Inc.*,
 2 152 Wn.2d 828, 834, 100 P.3d 791 (2004) (a non-compete agreement entered into after
 3 employment is not binding unless it was supported by independent consideration, which involves
 4 new promises or obligations previously not required of the parties); *Thompson v. St. Regis Paper*
 5 Co., 102 Wn.2d 219, 228-29, 685 P.2d 1081 (1984) (“offer, acceptance and consideration are
 6 necessary predicates to establishing that policies in an employment manual” are part of a contract
 7 between the employer and employee); *see also Mills v. Bank of Am., N.A.*, No. 3:14-cv-05238-
 8 RBL, 2014 U.S. Dist. LEXIS 117563, at *11-12 (W.D. Wash. Aug. 22, 2014) (dismissing breach
 9 of contract claim because existence of contract was not plausibly alleged where, among other
 10 things, plaintiff did not provide “any facts which show a contract was formed” including that “there
 11 was no consideration”); *Butcher v. Mortg. Elec. Registration Sys., Inc.*, No. 3:11-cv-00886, 2012
 12 U.S. Dist. LEXIS 124162, at *7-8 (D. Nev. Aug. 31, 2012) (dismissing breach of contract claim
 13 because “[t]he Complaint alleges the existence of a contract, but that allegation constitutes a legal
 14 conclusion that we need not except as true” and plaintiff “failed to plead consideration”).

15 The relevant “contract” is Plaintiff’s Code of Ethics, which is referenced in and attached
 16 to the Complaint as Exhibit D. Plaintiff does not allege that any of its former employees received
 17 any consideration in exchange for acknowledging and agreeing to conform to the Code of Ethics.
 18 Bombardier hired Dornéval in July 2007, and Basson in March 2013. The Code of Ethics has two
 19 copyright dates: January 2012 for the English version, and June 2011 for the French version. *See*
 20 Dkt. #1-13, pp. 29 & 57. Plaintiff offers no facts to support an inference that these or any other
 21 versions of the Code of Ethics were part of the individuals’ initial employment contracts, whether
 22 the terms and conditions were amended over time,¹ or what consideration was given and when.
 23 Without such allegations, Plaintiff fails to state a claim for breach of contract.

24
 25
 26
 27 ¹ The Introduction to the Code of Ethics provides that the “printed version of the Code is subject to change
 without notice[,] further undercutting the assertion it is a contract.” *See* Dkt. No. 1-13, page 6 or 57.

1 **2. Plaintiff Fails to Plausibly Allege Any Breach of the Code of Ethics.**

2 Even if the Code of Ethics were a valid contract, it only instructs employees as follows:
 3 “Do not divulge confidential information to anyone other than the person or persons for whom it
 4 is intended, unless authorized . . . to do so.” *See* Complaint Exh. D, Dkt. No. 1-13, p. 18 of 57.
 5 “Employees should also exercise caution to avoid misusing or inadvertently disclosing confidential
 6 information [and] transmitting confidential documents by electronic devices, such as by fax or
 7 email, only when it is reasonable to believe this can be done under secure conditions[.]” *Id.*
 8 Nothing in the Code of Ethics prohibits employees from sending documents to their personal email
 9 accounts. Functionally, this is no different than an employee printing a confidential document for
 10 himself or herself, and surely Plaintiff would not contend that this would be a breach of contract.
 11 Note that the Code of Ethics only prohibits “unnecessary copying” of confidential documents. *Id.*

12 Plaintiff’s breach of contract claims against Dornéval relating to the February 10, 2017,
 13 email fails as a matter of law because Plaintiff acknowledges the emails themselves failed. Because
 14 Dornéval did not receive the documents on her personal email, Plaintiff cannot establish any
 15 damages, an essential element of a breach of contract claim. The allegation that Dornéval may
 16 have copied the document when the email failed is pure speculation requiring an unreasonable
 17 inference that cannot support a valid claim.

18 Plaintiff never alleges its former employees were not authorized to have the documents at
 19 issue, that they were not intended recipients of those documents, nor that their personal email
 20 accounts were insecure. The allegations that they emailed the documents with intent to misuse
 21 them is based on pure speculation and implausible inferences. The mere possibility that they
 22 misused the documents after leaving Bombardier is not sufficient to state a claim, and the breach
 23 of contract claims should be dismissed.

24 **B. Tortious Interference Claims (Against AeroTEC or Korwin-Szymanowski).**

25 Plaintiff’s claims against AeroTEC and Korwin-Szymanowski for tortious interference
 26 also fail because Plaintiff fails to allege a valid contractual relationship or legally protectible
 27 business expectancy, or that these defendants interfered by improper means or for an improper

1 purpose. Under Washington law, the elements for tortious interference are: “(1) the existence of
 2 a valid contractual relationship or business expectancy; (2) that defendants had knowledge of that
 3 relationship; (3) an intentional interference inducing or causing a breach or termination of the
 4 relationship or expectancy; (4) that defendants interfered for an improper purpose or used improper
 5 means; and (5) resultant damage.” *T Mobile USA, Inc. v. Huawei Device USA, Inc.*, 115 F. Supp.
 6 3d 1184, 1195 (W.D. Wash. 2015); (quoting *Leingang v. Pierce Cty. Med. Bureau*, 131 Wn.2d
 7 133, 930 P.2d 288 (1997)).

8 **1. Plaintiff Has Failed to Allege a Valid Contractual Relationship or Business
 9 Expectancy.**

10 Plaintiff asserts interference with the following interests: (1) a contractual relationship
 11 and/or business expectancy under the Code of Ethics that former employees would “not divulge
 12 [Bombardier] confidential information to anyone other than the person or persons to whom it is
 13 intended, unless authorized or legally required to do so; (2) a business expectancy that it would
 14 “continue to employ its personnel”; (3) a business expectancy that it would “not lose a significant
 15 number of its key personnel; and (4) a business expectancy that it would “generally adhere to its
 16 certification schedules set forth for the C Series and Global 7000/8000 Aircraft. Complaint ¶¶156-
 17 159, 252-255. None of these amount to valid, protectible legal interests.

18 Plaintiff fails to sufficiently allege the existence of any contractual relationship. As set forth
 19 above, the Complaint is devoid of any allegations that the Code of Ethics’ provisions were
 20 supported by any valid consideration, or that they were even breached at all. Furthermore, Plaintiff
 21 does not plausibly allege that AeroTEC or Korwin-Szymanowski induced or caused any breach of
 22 the Code of Ethics.

23 Plaintiff does not allege any other contractual relationship. As for the asserted “business
 24 expectancies,” Plaintiff fails to identify any valid, protectible interest that Korwin-Szymanowski
 25 or AeroTEC interfered with. Bombardier fails to present sufficient facts to state a cognizable legal
 26 theory that any of its former employees were more than “at-will” employees. Plaintiff’s only
 27 allegation to support any other inference is that the employees had a “continuing obligation

1 following termination of employment” to maintain the confidentiality of confidential information.
 2 Complaint ¶¶157, 253. But that alone does not convert “at-will” employment into anything more.
 3 “Generally, an employment contract, indefinite as to duration, is terminable at will by either the
 4 employee or employer.” *Thompson v. St. Regis Paper Co.*, 102 Wn.2d 219, 223, 685 P.2d 1081
 5 (1984). Consequently, “in the absence of a contract stating otherwise, an employee has the *absolute*
 6 *right* to abandon his or her employment at-will”—a rule that has been in effect under Washington
 7 law for nearly a century. *Ford v. Trendwest Resorts, Inc.*, 146 Wn.2d 146, 152, 43 P.3d 1223
 8 (2002) (*en banc*) (emphasis added). Generally, at-will employees do not have a business
 9 expectancy in continued employment.” *Woody v. Stapp*, 146 Wn. App. 16, 24, 189 P.3d 807
 10 (2008); *see also Gamble v. Pac. Nw. Reg'l Council of Carpenters*, No. C14-455 RSM, 2015 U.S.
 11 Dist. LEXIS 69293, at *12 (W.D. Wash. May 28, 2015). Likewise, an employer has no expectancy
 12 in continuing to employ at-will employees. In *Nat'l City Bank, N.A. v. Prime Lending, Inc.*, No.
 13 CV-10-034-EFS, 2010 U.S. Dist. LEXIS 85888 (E.D. Wash. July 19, 2010), for example, the
 14 plaintiffs sued the defendant for, *inter alia*, tortious interference with a business expectancy after
 15 the defendant, a direct competitor, recruited “almost all” of plaintiffs’ employees to come work
 16 for it. Even though the “mass resignation” of the employees—which took place on a single day—
 17 “effectively shut down [the plaintiffs’] operations in the region and handed them over to [the
 18 defendant],” the court dismissed the plaintiffs’ tortious interference claim with prejudice,
 19 concluding that they “did not have a business expectancy in their future relationship with their at-
 20 will employees.” *Id.* at *1, 5; *see also Evergreen Moneysource Mrtg. Co. v. Shannon*, 167 Wn.
 21 App. 242, 258-59, 274 P.3d 375 (2012) (dismissing tortious interference claim on summary
 22 judgment where plaintiff failed to prove existence of valid expectancy in continued employment
 23 of at-will employees).

24 Plaintiff utterly fails to allege any facts sufficient to show any valid expectation of
 25 “retaining employees” or “not los[ing] a significant number of its key personnel.” It should be
 26 noted that plaintiff nowhere alleges that any of AeroTEC’s employees were “key personnel.”
 27 Moreover, the inference that it in fact lost a significant number of key personnel is contradicted by

1 the indiscriminate allegation that AeroTEC and the other corporate defendants improperly solicited
 2 and hired a “critical mass” of 92 out of the more than 29,000 employees in its aerospace division.
 3 Complaint ¶¶22, 59, 121, 132.

4 As for Plaintiff’s last alleged business expectancy – that it would “generally adhere to its
 5 certification schedules” – is equally unavailing. Nowhere does Bombardier allege that its
 6 certification schedules were in fact delayed by any act of the defendants. Without this allegation
 7 of damages, its tortious interference claims fail. The formulaic recitation of the essential elements
 8 of the cause of action is insufficient as a matter of law. *Twombly*, 550 U.S. at 557; *see also*
 9 *Racetech, LLC v. Ky. Downs, LLC*, 169 F. Supp. 3d 709, 718 (W.D. Ky. 2016) (dismissing tortious
 10 interference counterclaim where defendant “pointed to no contract or business relationship [that
 11 had] been actually interfered with”); *Wilco AG v. Packaging Techs. & Inspection LLC*, 615 F.
 12 Supp. 2d 320, 324-26 (D. Del. 2009) (dismissing defendant’s counterclaim for tortious interference
 13 based on plaintiff improperly demanding that defendant remove certain information from a
 14 presentation where the presentation had ultimately been given in unabridged form); *see also Linens*
 15 *of Eur., Inc. v. Best Mfg., Inc.*, No. 03 Civ. 9612 (GEL), 2004 U.S. Dist. LEXIS 18575 at *69-70
 16 (S.D.N.Y. Sept. 16, 2004) (dismissing tortious interference claim premised on defendant’s efforts
 17 to bribe plaintiff’s client because bribery efforts had failed).

18 **2. Plaintiff Has Failed to Plausibly Allege Interference for Any “Improper
 19 Purpose” or by “Improper Means.”**

20 Plaintiff does not allege that AeroTEC or Korwin-Szymanowski used any “improper
 21 means” to solicit employees, and it fails to plausibly identify any improper purpose or motive.
 22 Plaintiff’s two identified “purposes” are: (1) “to illicitly obtain” Plaintiff’s confidential information
 23 to assist in the MRJ project; and (2) “to harm Bombardier in the form of costly delays to its
 24 certification efforts[.]” Complaint ¶¶162, 258. These are implausible inferences derived from
 25 speculative facts only. First, as set forth above, Plaintiff fails to plausibly allege that Korwin-
 26 Szymanowski or AeroTEC ever obtained any of the confidential documents or information in
 27 dispute, or how it would have been relevant or useful to their work on the MRJ project. The

1 conclusion that AeroTEC or Korwin-Szymanowski had any reason to try to delay Plaintiff's
 2 certification schedule is unsupported and unwarranted speculation. A much more plausible
 3 explanation for AeroTEC's and Korwin-Szymanowski's open and public recruiting efforts was
 4 they simply wanted to hire employees with aircraft engineering and certification skills and
 5 experience. Plaintiff does not point to any basis for its inference that the alleged interference was
 6 wrongful, and no plausible basis to infer that AeroTEC or Korwin-Szymanowski were motivated
 7 by any improper purpose, such as malice or ill will.

8 "Interference is wrongful if it is done for an improper purpose or by improper means." *Life*
 9 *Designs Ranch, Inc. v. Sommer*, 191 Wn. App. 320, 338, 364 P.3d 129 (2015) (citing *Pleas v.*
 10 *Seattle*, 112 Wn.2d 794, 774 P.2d 1158, 1163-64 (1989)). However, "[e]xercising in good faith
 11 one's legal interests is not improper interference." *Experience Hendrix, L.L.C. v.*
 12 *HendrixLicensing.com, LTD*, 766 F. Supp. 2d 1122, 1147 (W.D. Wash. 2011) (quoting *Leingang*,
 13 131 Wn.2d at 157). In fact, "[t]o be improper, interference must be wrongful by some measure
 14 beyond the fact of the interference itself, such as a statute, regulation, recognized rule of common
 15 law, or an established standard of trade or profession." *Moore v. Commercial Aircraft Interiors,*
 16 *LLC*, 168 Wn. App. 502, 510, 278 P.3d 197 (2012) (citing *Pleas*, 112 Wn.2d at 803-4). Soliciting
 17 qualified employees – especially those not subject to any non-competition or non-solicitation
 18 restrictions – is not improper. *See Leingang*, 131 Wn.2d (1997).

19 **C. The Breach of Contract Claims and Tortious Interference Claims Also Fail Because
 20 They are Preempted by WUTSA.**

21 Even if Plaintiff had plausibly alleged facts to state a claim for breach of contract or tortious
 22 interference, those claims would both fail as a matter of law because they are preempted by
 23 Washington's Uniform Trade Secrets Act ("WUTSA"). Plaintiff's breach of contract and tortious
 24 interference claims are both based on alleged trade secret misappropriation. RCW Chapter 19.108
 25 "displaces conflicting tort, restitutionary, and other law of this state pertaining to misappropriation
 26 of a trade secret" and "does not affect . . . [c]ontractual or other civil liability for relief that is not
 27 based upon misappropriation of a trade secret[.]" RCW 19.108.900(1)-(2) (emphasis added).

1 A claim is valid only if it is ““wholly independent’ of facts used to prove trade secret
 2 misappropriation.” *Inteum Co., LLC v. Nat'l Univ. of Singapore*, No. C17-1252-JCC, 2018 U.S.
 3 Dist. LEXIS 85713 at *4 (W.D. Wash. May 22, 2018); *Thola v. Henschell*, 140 Wn. App. 70, 82,
 4 164 P.3d 524 (2007) (“A plaintiff may not rely on acts that constitute trade secret misappropriation
 5 to support other causes of action.”) (quotations omitted). “To determine whether the [W]UTSA
 6 preempts a common law claim, the court must (1) assess the facts that support the plaintiff’s civil
 7 claim; (2) ask whether those facts are the same as those that support the plaintiff’s [W]UTSA
 8 claim; and (3) hold that the [W]UTSA preempts liability on the civil claim unless the common law
 9 claim is factually independent from the [W]UTSA claim.” *Ultimate Timing, L.L.C. v. Simms*, 715
 10 F. Supp. 2d 1195, 1208 (W.D. Wash. 2010), *on reconsideration in part*, *Ultimate Timing, L.L.C.*
 11 *v. Simms*, No. C08-1632-MJP, 2010 U.S. Dist. LEXIS 64957 (W.D. Wash. June 29, 2010)
 12 (quotations omitted).

13 Plaintiff’s tortious interference and breach of contract claims are premised on the very same
 14 alleged misappropriation of trade secrets that form the basis of its WUTSA claim. The claims
 15 therefore fail as a matter of law and should be dismissed for failure to state a claim under Fed. R.
 16 Civ. P. 12(b)(6). *See T-Mobile USA, Inc. v. Huawei Device USA, Inc.*, 115 F. Supp. 3d 1184, 1199
 17 (W.D. Wash. 2015) (dismissing tortious interference claim because “there are no allegations in T–
 18 Mobile’s complaint that indicate that it can prove tortious interference without relying on the same
 19 facts that support its trade secret claim”); *see also Labor Ready, Inc. v. Williams Staffing, LLC*,
 20 149 F. Supp. 2d 398, 410 (N.D. Ill. 2001) (dismissing plaintiff’s tortious interference claim as
 21 “clearly preempted” under comparable Illinois trade secret statute where plaintiff alleged that
 22 defendant had caused plaintiff’s former employees to disclose and use plaintiff’s confidential
 23 information and trade secrets).

24 **D. Trade Secret Misappropriation Claims Under the DTSA and WUTSA Fail.**

25 Finally, Plaintiff’s claims that any of the AeroTEC Defendants “misappropriated” any
 26 trade secrets also fail as a matter of law. Under both the Defend Trade Secrets Act (“DTSA”) (18
 27 U.S.C. § 1836 *et seq.*) and the WUTSA, “misappropriation” is defined as:

KARR TUTTLE CAMPBELL
 701 Fifth Avenue, Suite 3300
 Seattle, Washington 98104
 Main: (206) 223 1313
 Fax: (206) 682 7100

- (A) *acquisition* of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
- (B) *disclosure* or *use* of a trade secret of another without express or implied consent by a person who—
 - (i) used improper means to acquire knowledge of the trade secret; [or]
 - (ii) at the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was—
 - (I) derived from or through a person who had used improper means to acquire the trade secret;
 - (II) acquired under circumstances giving rise to a duty to maintain the secrecy of the trade secret or limit the use of the trade secret; or
 - (III) derived from or through a person who owed a duty to the person seeking relief to maintain the secrecy of the trade secret or limit the use of the trade secret[.]²

18 U.S.C. § 1839(5) (emphasis added); RCW 19.108.010(2). The term “improper means . . . includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means [but] does not include reverse engineering, independent derivation, or any other lawful means of acquisition.” 18 U.S.C. § 1839(6); RCW 19.108.010(1).

Thus, DTSA and WUTSA define misappropriation in two ways. First, under the “acquisition prong”, misappropriation is defined as “acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means[.]” 18 U.S.C. § 1839(5)(A); RCW 19.108.010(2)(a). Under the “use or disclosure” prong of the statutes, an alternative definition of “misappropriation” is: “disclosure or use of a trade secret of another” by someone who themselves used “improper means” to acquire it, or who had knowledge that it was derived from or through a person who either used improper means to acquire it, acquired it under circumstances giving rise to a duty to maintain secrecy or limit its use, or who owed a

² “Misappropriation” also includes the disclosure or use of another’s trade secret by a person who, before a material change in his position, knew or had reason to know that (i) the trade secret was a trade secret, and that (ii) knowledge of the trade secret had been acquired by accident or mistake. *See* 18 U.S.C. §1839(5)(B)(iii); RCW §19.108.010(2)(b)(iii). Plaintiff does not allege this type of misappropriation.

1 duty to the person seeking relief to maintain the secrecy of the trade secret. 18 U.S.C. § 1839(5)(B);
 2 RCW 19.108.010(2)(b)(i)-(ii). Plaintiff has failed to identify facts to plausibly allege trade secret
 3 misappropriation by any of the AeroTEC Defendants.

4 **1. Basson and Dornéval Never Improperly Acquired the Documents.**

5 Basson and Dornéval are alleged to have acquired documents they emailed or attempted to
 6 email *to themselves while still employed by Plaintiff*. Plaintiff does not allege that they were not
 7 entitled to possession of the documents, that emailing to employee's personal accounts was
 8 prohibited, or that Basson or Dornéval had any reason to suspect their personal email accounts
 9 were not secure. Plaintiff fails to sufficiently allege facts to support a reasonable inference that
 10 Basson or Dornéval acquired the documents at issue by any "improper means." An employee
 11 cannot "acquire" a trade secret by improper means if they already have possession of it as an
 12 employee. *See JustMed Inc. v. Byce*, 600 F.3d 1118, 1129 (9th Cir. 2010). However, they can
 13 nevertheless acquire it "under circumstances giving rise to a duty to maintain its secrecy or limit
 14 its use." *Id.* In such a circumstance, since there can be no liability under the "acquisition prong,"
 15 the employee could only be said to have "misappropriated" the trade secret if the employee "used
 16 or disclosed" it. *Id.*

17 These documents must have already been in Basson and Dornéval's possession as
 18 employees at the time they emailed them. Thus, they could not have "misappropriated" them under
 19 the "acquisition prong" of the statute. Aside from Bombardier's conclusory and formulaic
 20 allegations that Basson and Dornéval's emails to themselves constitute the "improper means"
 21 giving rise to liability under the acquisition prong of the trade secret statutes, they allege no facts
 22 regarding the acquisition of these emails by either Basson or Dornéval plausibly indicating that
 23 improper means were used. Plaintiff's misappropriation claims relying on "acquisition" fail.

24 As set forth above, the claim that Dornéval acquired the documents attached to her
 25 February 10, 2007, emails additionally fail because Plaintiff fails to plausibly allege that Dornéval
 26 acquired the documents attached to those emails, which admittedly failed to go through. Because
 27 the emails failed, they did not result in the acquisition of the attachments.

1

2

3 **2. The DTSA Claim Against Basson Fails Because the DTSA is not Retroactive**

4 The DTSA claim against Basson also fails because it was enacted on May 11, 2016, after
 5 Basson allegedly misappropriated the documents he emailed himself. The Congressional Act
 6 creating the DTSA states in its effective date that “the amendments made by this section shall
 7 apply with respect to any misappropriation of a trade secret . . . for which any act occurs on or
 8 after the date of the enactment of this Act.” Defend Trade Secrets Act of 2016, Pub. L. No. 114-
 9 153, § 2(e).

10

11 **3. There is No Plausible Factual Basis for the Claim That Basson and Dornéval
 Used or Disclosed Trade Secrets.**

12 Plaintiff’s claims against Basson and Dornéval under the “use or disclosure” prong also
 13 fail. Plaintiff repeatedly states that on “information and belief” the defendants disclosed trade
 14 secret information to unauthorized and undisclosed third parties. However, the facts it uses to
 15 support these assertions rely on speculative inferences to connect them to the causes of action,
 16 failing to meet the minimum pleading burden under *Twombly*. Plaintiff makes no specific factual
 17 allegations against any of the employee defendants, which if assumed true, would demonstrate
 18 disclosure. Rather, Plaintiff merely asserts that Defendants acted in a manner consistent with
 19 liability.

20 **4. There is no Plausible Factual Basis for the Claim That AeroTEC and Korwin-
 Szymanowski Misappropriated Trade Secrets.**

21 Plaintiff’s misappropriation claims against AeroTEC and Korwin-Szymanowski are
 22 similarly based on speculation and implausible inferences. Plaintiff asserts no specific facts to
 23 support these claims, relying exclusively on speculation and implausible inferences from the
 24 timing of the MRJ redesigns and certification scheduling announcements. Plaintiff fails to allege
 25 sufficient facts, which if true, would demonstrate that the trade secrets allegedly acquired by
 26 former Bombardier employees were either “acquired” by, “used” by, or “disclosed” to AeroTEC,
 27 Korwin-Szymanowski, or any other AeroTEC employee. The Complaint does not contain any

1 reference to disclosure by AeroTEC or Korwin-Szymanowski, but claims only in a conclusory
 2 manner that they “used” or “acquired” them. Complaint ¶120, ¶131. However, Plaintiff fails to
 3 allege any plausible factual claim that would demonstrate such use or acquisition.

4 **5. Knowledge of Misappropriation may not be Imputed to AeroTEC or Korwin-
 5 Szymanowski.**

6 Even if it were conclusively shown that an employee had misappropriated trade secrets
 7 from his or her former employer, this would be insufficient to impute and wrongdoing to AeroTEC
 8 or Korwin-Szymanowski. The UTSA requires that a person or entity accused of misappropriation
 9 both possess a trade secret and either know or have reason to know the trade secret was acquired
 10 by improper means. *See* 18 U.S.C. § 1839(5)(A),(B); RCW 19.108.010(2)(a),(b). There is no such
 11 factual allegation, aside from a conclusory recitation of the elements, that either AeroTEC or
 12 Korwin-Szymanowski ever possessed any trade secret that they knew or had reason to know
 13 anyone had misappropriated by improper means. Complaint ¶234, ¶238. Even if it were
 14 conclusively shown that an employee misappropriated trade secrets from his or her former
 15 employer, this would not be sufficient to impute any wrongdoing to the current employer. *See*
 16 *Joshua David Mellberg LLC v. Will*, 96 F. Supp. 3d 953, 982 (D. Ariz. 2015). In *Mellberg*, the
 17 plaintiff alleged that a competitor was liable for trade secret misappropriation because it hired two
 18 former employees that took the plaintiff’s trade secrets and used them at their new job. The court
 19 dismissed the claim because “no facts show[ed] that [competing company] had any knowledge
 20 whatsoever regarding the information purportedly used” by those former employees, even though
 21 the competing company’s requisite knowledge was “conceivable.” *Id.*

22 With regard to AeroTEC, proof that an employee possessed or acquired trade secrets would
 23 not create an inference of liability as to the corporate entity. *See Droege v. Welsh Sporting Goods*
 24 *Corp.*, 541 F.2d 790, 792-93 (9th Cir. 1976). “It is generally not appropriate to direct a jury to
 25 impute an agent’s knowledge of a secret to the principal.” *Id.*; *accord, Carr v. AutoNation Inc.*,
 26 No. 2:17-cv-01539, 2018 U.S. Dist. LEXIS 1869, at *6 (E.D. Cal. Jan. 4, 2018). It is a matter of
 27 common-sense that such knowledge could not be imputed to Korwin-Szymanowski, a fellow

1 employee, absent some factual assertion indicating that such information was shared with him.

2 There is no such fact alleged.

3 **6. There are no Facts Alleged Sufficient to Plausibly Demonstrate**
Misappropriation by AeroTEC or Korwin-Szymanowksi.

4 Plaintiff casts AeroTEC and Korwin-Szymanowski’s “willful, targeted” recruitment
 5 efforts, and AeroTEC’s subsequent business successes as somehow evidencing the disclosure of
 6 trade secrets. Complaint ¶132. However, Plaintiff fails to point to any facts sufficient to raise
 7 anything more than a mere possibility of liability. That is not enough. *See Twombly*, 550 U.S. at
 8 557 (explaining that the mere possibility of misconduct does not state a plausible claim); *Inteum*
 9 *Co., LLC v. Nat'l Univ. of Singapore*, No. C17-1252-JCC, 2017 U.S. Dist. LEXIS 212095, at *8
 10 (W.D. Wash. Dec. 27, 2017) (holding that even allegations “indicat[ing] motive, opportunity, and
 11 possibility of improper disclosure or transfer of protected [trade secrets]” were insufficient to state
 12 a claim for misappropriation). Indeed, the facts indicated by the Plaintiff as supportive of use or
 13 disclosure are consistent with good business practices, i.e. competing to recruit the best in the field
 14 and subsequently enjoying success. Plaintiff states that the evidence of AeroTEC’s success is just
 15 an example “and by no means limiting.” *Id.* However, to survive a motion to dismiss Plaintiff must
 16 come forward with sufficient facts to state a plausible claim, not merely state that the information
 17 exists.

18 In the end, the only facts supporting the claim that AeroTEC or any of its employees ever
 19 acquired or actually used the documents Basson, Dornéval, Delarche or Ayre are accused of
 20 stealing are the allegations that after a number of MRJ certification scheduling adjustments,
 21 AeroTEC and the other corporate defendants recruited and hired a “critical mass” of Bombardier
 22 employees, and shortly thereafter MITAC announced design changes to the MRJ’s avionics bay,
 23 which prompted MITAC to estimate certification of the MRJ in 2019. Plaintiff relies on this
 24 timeline to argue that the AeroTEC Defendants used a handful of documents, which were key to
 25 the extremely complex issue of aircraft engineering, testing and certification. There is no allegation
 26 that identified trade secret documents had anything to do with the components, design or redesign
 27

1 of the MRJ. This is precisely the kind of speculation based on implausible inference that Rule
 2 12(b)(6) is designed to weed out.

3 **III. CONCLUSION**

4 The entire Complaint is implausible on its face. Given that this entire litigation was clearly
 5 brought to stifle competition by MITAC, Plaintiff's claims against AeroTEC and the employees
 6 caught up in the middle should be scrutinized carefully. Plaintiff's formulaic recitation of its
 7 claims' elements are not supported by the few actual facts alleged or plausible inferences drawn
 8 therefrom. This Court should therefore dismiss all claims against the AeroTEC Defendants.

9 Dated this 20th day of December, 2018.

10 **KARR TUTTLE CAMPBELL**

11 *Attorneys for Defendants AeroTEC, Basson,
 Dornéval and Korwin-Szymanowski*

12 /s/ Richard J. Omata

13 /s/ Mark A. Bailey

14 Richard J. Omata, WSBA #7032

15 Mark A. Bailey, WSBA# 26337

16 701 Fifth Avenue, Suite 3300

17 Seattle, WA 98104

18 Phone: 206-223-1313

19 Fax: 206-682-7100

20 Email: romata@karrtuttle.com

21 mbailey@karrtuttle.com

DECLARATION OF COUNSEL

I, Mark A. Bailey, declare as follows:

I am an attorney with Karr Tuttle Campbell, counsel of record for the AeroTEC Defendants identified in the above motion. I make this declaration based on personal knowledge and am otherwise competent to testify to the matters stated herein.

Counsel for the parties met and conferred in person on December 18, 2018, to discuss the AeroTEC Defendants' motion to dismiss and the potential for resolution of any of the issues. We thoroughly discussed the substance of this motion in an attempt to avoid the need to file this motion to dismiss in good faith.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and accurate.

Executed this 20th day of December, 2018, at Seattle, Washington.



Mark A. Bailey

CERTIFICATE OF SERVICE

I, Sherelyn Anderson, affirm and state that I am employed by Karr Tuttle Campbell in King County, in the State of Washington. I am over the age of 18 and not a party to the within action. My business address is: 701 Fifth Avenue, Suite 3300, Seattle, Washington 98104. On this day, I electronically filed the foregoing AeroTEC Defendants' Motion to Dismiss with the Clerk of the Court and caused it to be served upon the below counsel of record using the CM/ECF system.

Brian F. McMahon, WSBA #45739
Erin L. Calkins, WSBA #44127
John D. Denkenberger, WSBA #25907
Christensen O'Connor Johnson & Kindness
1201 Third Avenue, Suite 3600
Seattle, WA 98101-3029
Phone: 206-682-8100
Fax: 206-224-0779
Email: brian.mcmahon@cojk.com
lindsay.calkins@cojk.com
denkenj@cojk.com

Atorneys for Plaintiff

Jerry A. Riedinger, WSBA #25828
Mack H. Shultz, Jr., WSBA #27190
James Sanders, WSBA #24565
Mary Z. Gaston, WSBA #27258
Shylah R. Alfonso, WSBA #33138
Perkins Coie LLP
1201 3rd Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206-359-8000
Fax: 206-359-9000
Email: jriedinger@perkinscoie.com
mshultz@perkinscoie.com
jsanders@perkinscoie.com
mgaston@perkinscoie.com
salfonso@perkinscoie.com

Attorneys for Mitsubishi Aircraft Corporation America, Inc.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, to the best of my knowledge.

Dated this 20th day of December, 2018, at Seattle, Washington.

/s/ Sherelyn Anderson
Sherelyn Anderson
Legal Assistant